

## **TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Marcie Nolan, AICP, Acting Development Services Director

**PREPARED BY:** Daniel J. Stallone, Esq., Code Compliance Official

**SUBJECT:** Request to Increase Code Enforcement Fines and Establish Code Cost Recovery

**AFFECTED DISTRICT:** All

**ITEM REQUEST:** **Schedule for Council Meeting**

**TITLE OF AGENDA ITEM:** CODE AMENDMENT - AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 6, SECTION 6-9 (a), ENTITLED ESTABLISHMENT OF FINE AND LIEN; PROVIDING FOR INCREASE OF CODE COMPLIANCE FINE PROVISIONS ADMINISTERED BY A CODE ENFORCEMENT BOARD OR SPECIAL MAGISTRATE; PROVIDING FOR COST RECOVERY TO REIMBURSE THE TOWN OF DAVIE TO COVER ALL COSTS INCURRED BY THE TOWN IN ENFORCING ITS CODES AND ALL COSTS OF REPAIRS RELATED THERETO; PROVIDING FOR CRITERIA TO BE CONSIDERED BY THE CODE ENFORCEMENT BOARD OR SPECIAL MAGISTRATE IN DETERMINING THE AMOUNT OF CODE ENFORCEMENT FINES; AND PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:** The Code Compliance Official respectfully submits this request to adopt an ordinance to allow an increase in code enforcement fines from \$250 to \$1,000 per violation for a first offense, from \$500 to \$5,000 for a repeating violation, and up to \$15,000 for an irreparable violation and to establish cost recovery criteria according to those provisions in the Florida Statutes Ch.162.09(2)(d).

The statutory requirements for the increased fine amounts come from the F.S. Ch. 162.09(2)(d) and state that a municipality must have a population equal to or greater than 50,000 in order to adopt, by a vote of at least a majority plus one of the entire governing body of the municipality, an ordinance that gives code enforcement boards or special magistrates, or both, the authority to impose fines in excess of the current statutory limits.

As a component of a Code Compliance Cost Recovery Program, for code violation fines, a code enforcement board or special magistrate may impose additional fines to cover all costs incurred by the Town in enforcing its codes and all costs of repairs, as necessary.

**PREVIOUS ACTIONS:** N/A

**CONCURRENCES:** N/A

**FISCAL IMPACT:** not applicable

Has request been budgeted? n/a

Additional Comments: Upon approval for the time of the next budget adjustment Development Services/Code Enforcement will be requesting additional revenue and expense accounts to implement the cost recovery program.

**RECOMMENDATION(S):** Staff finds the ordinance complete and suitable for Town Councils consideration.

**Attachment(s):** Ordinance, Florida Statute 162.09 Administrative fines; costs of repair

ORDINANCE \_\_\_\_\_

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA,  
AMENDING THE CODE OF ORDINANCES, CHAPTER 6, SECTION  
6-9 (a), ENTITLED ESTABLISHMENT OF FINE AND LIEN;  
PROVIDING FOR INCREASE OF CODE COMPLIANCE FINE  
PROVISIONS ADMINISTERED BY A CODE ENFORCEMENT  
BOARD OR SPECIAL MAGISTRATE; PROVIDING FOR COST  
RECOVERY TO REIMBURSE THE TOWN OF DAVIE TO COVER  
ALL COSTS INCURRED BY THE TOWN IN ENFORCING ITS  
CODES AND ALL COSTS OF REPAIRS RELATED THERETO;  
PROVIDING FOR CRITERIA TO BE CONSIDERED BY THE CODE  
ENFORCEMENT BOARD OR SPECIAL MAGISTRATE IN  
DETERMINING THE AMOUNT OF CODE ENFORCEMENT FINES;  
AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Davie desires that the Town  
effectively and efficiently enforce the codes of the Town through the code enforcement  
board or special magistrate; and;

WHEREAS, the current amounts of code enforcement fines may be increased  
through meeting the requirements of the Florida Statutes Chapter 162.09(2)(d); and;

WHEREAS, the Florida Statutes Chapter 162.09(2)(d) provide that a code  
enforcement board or special magistrate may impose fines for first offense code  
violations in an amount not to exceed \$1,000 for each day such violation occurs, and that  
the code enforcement board or special magistrate may impose fines for repeat code  
violations in an amount not to exceed \$5,000 for each day such violation occurs, and that  
the code enforcement board or special magistrate may impose fines for irreparable or  
irreversible code violations in an amount not to exceed \$15,000 for each such violation;  
and;

WHEREAS, the Florida Statutes Chapter 162.09(2)(d) provide that a code  
enforcement board or special magistrate may impose additional fines to cover all costs

incurred by the Town in enforcing the code and all costs of repairs for said code violations, whereby said fines shall be determined by the Town's actual costs; and;

WHEREAS, the Florida Statutes Chapter 162.09(2)(d) provide that a code enforcement board or special magistrate imposing the increased code enforcement fines shall consider the following criteria in determining the amount of the fines, including, but not limited to, those factors as set forth here:

1. The gravity of the violation;
2. Any actions taken by the violator to correct the violation; and,
3. Any previous violations committed by the violator; and;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town of Davie, by a supermajority vote of the Town Council, approves the establishment of code enforcement board or special magistrate fines up to the maximum allowed by Florida Statutes Chapter 162.

SECTION 2. The Town of Davie, by a supermajority vote of the Town Council, approves the ability for the code enforcement board or special magistrate to recoup, as necessary, all costs incurred by the Town in enforcing the code, as provided for in Florida Statutes Chapter 162.

SECTION 3. The Town hereby amends Section 6-9(a) and adds the following language:

**Section 6-9, Establishment of fine and lien and cost recovery.**

- (a) The establishment of a fine and lien shall be consistent with and pursuant to the provisions of Chapter 162. When imposing the increased code enforcement fines the code enforcement board or special magistrate shall consider the following

criteria in determining the amount of the fines, including, but not limited to, those factors as set forth here:

1. The gravity of the violation;
2. Any actions taken by the violator to correct the violation.
3. Any previous violations committed by the violator.

The Town shall utilize the provision within the Statute allowing for the imposition of additional fines to cover all costs incurred by the Town in enforcing the code and all costs of repairs for said code violations. The fines shall be determined by the Town's actual costs.

SECTION 4. All Ordinances or parts of ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 5. If any section, subsection, sentence, clause, phrase, or portion of the Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of the Ordinance.

SECTION 6. This ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008

PASSED ON SECOND READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008

\_\_\_\_\_  
ER  
ATTEST:

\_\_\_\_\_  
MAYOR/COUNCILMEMB

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TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008

History.8Os. 1, ch. 110-300; s. 7, ch. 82-37; s. 7, ch. 86-201; s. 7, ch.

89-268. Note.--Former s. 1()6.058.

162.09 Administrative fines; costs of repair; liens.8O

(1) An enforcement board, upon notification by the code inspector that an order of the enforcement board has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the enforcement board for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector. In addition, if the violation is a violation described in s. 162.06(4), the enforcement board shall notify the local governing body, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the local governing body to make further repairs or to maintain the property and does not create any liability against the local governing body for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this part, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, a code enforcement board finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in paragraph (2)(a).

(2)(a) A fine imposed pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (1). However, if a code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000 per violation.

(b) In determining the amount of the fine, if any, the enforcement board shall consider the following factors:

1. The gravity of the violation;
2. Any actions taken by the violator to correct the violation; and
3. Any previous violations committed by the violator.

(c) An enforcement board may reduce a fine imposed pursuant to this section.

(d) A county or a municipality having a population equal to or greater than 50,000 may adopt, by a vote of at least a majority plus one of the entire governing body of the county or municipality, an ordinance that gives code enforcement boards or special magistrates, or both, authority to impose fines in excess of the limits set forth in paragraph (a). Such fines shall not exceed \$1,000 per day per violation for a first violation, \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation if the code enforcement board or special magistrate finds the violation to be irreparable or irreversible in nature. In addition to such fines, a code enforcement board or special magistrate may impose additional fines to cover all costs incurred by the local government in enforcing its codes and all costs of repairs pursuant to subsection (1). Any ordinance imposing such fines shall include criteria to be considered by the code enforcement board or special magistrate in determining the amount of the fines, including, but not limited to, the factors set forth in paragraph (b). A certified copy of an order imposing a fine or a fine plus repair costs may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or